IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 16 OF 2003.

Fr. Jose Albino Verdes,
r/o H. No. 601, Opp.
State Bank of India,
Assolna, Salcete Goa. ... Applicant.

Versus

1. State of Goa through
   Public Prosecutor,
   Panaji, Goa.
2. Shri Dhinraj Govekar,
   Police Inspector,
   Mapusa Police Station,
   Mapusa, Goa. ... Respondents.

Mr. S. Vales, Advocate for the Applicant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent No. 1/State.

Mr. A.P. Lawande, Advocate for the Respondent No. 2.

Coram : P.V. HARDAS, J.

Date : 10th July 2003.

ORAL ORDER.

The applicant/original complainant, being aggrieved by the Judgment, dated 5th December 2002, passed by the Sessions Judge, South Goa, Margao, in Criminal Miscellaneous Application No. 50 of 2002, quashing the process issued against the respondent no. 2, has filed the present Criminal Revision Application.

2. The applicant had filed Criminal Case No. 136/P/2000/1/Addl., in the Court of the Judicial Magistrate, First Class, Margao, for offences punishable under Sections 220 and 342 of the Indian Penal Code.

The applicant/complainant examined three witnesses including himself and the learned trial Court by its Order, dated 2nd April 2002, issued process against the respondent no. 2 herein for the offences punishable under Sections 220 and 342 of the Indian Penal Code.

3. The allegations, in support of the charge under Sections 220 and 342 of the Indian Penal Code, set out in the complaint was that the accused, who was a Police Inspector, without questioning the applicant/complainant got the applicant/complainant arrested and made him stand outside the lock-up for several minutes and, thereafter, the complainant was made fun of and locked up in the Cuncolim Police Station in the evening hours. When the applicant/complainant questioned the respondent no. 2/accused, the applicant was not given any answer, but, only was told that he would be taught a lesson and, thereafter, the applicant/complainant was stripped of all his clothes except his underwear and made to sit in the lock-up the entire night. The applicant/complainant was also not taken to any hospital nor was any medical aid made available after the applicant/complainant informed the respondent no. 2/accused that he was not feeling well. The applicant/complainant was released on the next day by the Executive Magistrate. As stated above the learned Judicial Magistrate, by his Order, dated 2nd

April 2002, issued process against the respondent no. 2/accused for offences punishable under Sections 220 and 342 of the Indian Penal Code.

4. The respondent no. 2/accused, being aggrieved by the Order of the learned Magistrate issuing process against him for the offences punishable under Sections 220 and 342 of the Indian Penal Code, filed Criminal Revision Application No. 52 of 2002, before the Sessions Judge, South Goa, Margao. The learned revisional Court, after examining the statements of the complainant and the other two witnesses examined by the complainant, held in paragraph 25 of the impugned Judgment that the facts as stated by the applicant/complainant disclosed that the applicant/complainant was arrested under Section 151 of the Code of Criminal Procedure and was produced before the Executive Magistrate on the next day. The learned revisional Court then came to the conclusion that once it was established that the respondent no. 2/accused was a Police Inspector, who had arrested the applicant/complainant under Section 151 of the Code of Criminal Procedure, there was no question of Section 342 of the Indian Penal Code being pressed into service. In other words, therefore, once it was established that the applicant/complainant was arrested, the respondent no. 2/accused, who was a Police Inspector, could not be held

to have even, prima facie, committed an offence punishable under Section 342 of the Indian Penal Code. The learned revisional Court then in the same paragraph has further observed:- 'Moreover, the complainant nor the witnesses, through the facts stated by them, had brought out any elements to show that the complainant was confined corruptly or maliciously.'

5. I have heard Mr. Vales, the learned counsel appearing for the applicant, Mr. Sardessai, learned Public Prosecutor for the respondent No. 1/State and Mr. Lawande, learned counsel for the respondent no. 2. It is urged by the learned counsel for the applicant that the revisional Court has overstepped its bounds and has examined the material from the point of view of sufficiency for conviction. According to the learned counsel for the applicant, process was issued by the learned trial Court on being satisfied that a prima facie case was made out and, therefore, the revisional Court ought not to have interfered with the Order of the learned trial Court. The learned counsel on behalf of the respondents have supported the Order of the learned revisional Court.

6. With the assistance of the learned counsel for the parties, I have perused the statement of the applicant/complainant and his witnesses. The

applicant/complainant was arrested by the respondent no. 2 under Section 151 of the Code of Criminal Procedure. The applicant/complainant was, thereafter, produced before the Executive Magistrate on the next day. In such circumstances, the revisional Court has rightly held that the ingredients of the offence under Section 342 of the Indian Penal Code are not applicable. In respect of the averments relating to the offence under Section 220 of the Indian Penal Code, according to me, the revisional Court has rightly come to the conclusion that the material on record does not establish that the applicant/complainant was arrested corruptly or maliciously by the respondent no. 2. In the light of the evidence on record, therefore, according to me, the revisional Court was perfectly right in quashing the Order of the learned Magistrate issuing process against the respondent no. 2.

7. After giving my anxious consideration to the submissions advanced, I am of the opinion that the Judgment of the learned Sessions Judge does not need any interference in revision and, therefore, this Criminal Revision Application is summarily dismissed.

(P.V. HARDAS)
JUDGE.

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